EXHIBIT "D"

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 12th day of March in the year 2021 (In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Nerd Street Gamers Localhost Philadelphia, LLC 908 North Third Street Philadelphia, PA 19123 Phone: 267.702.6353

and the Contractor:

(Name, legal status, address and other information)

Scungio Borst Associates 2 Riverside Drive, Suite 500 Camden, NJ 08103 Phone: 856.757.0100

for the following Project: (Name, location and detailed description)

Localhost - Philadelphia, PA & NSG HQ 401 North Broad Street Philadelphia, PA 19108

Fit-out construction of a new Localhost esports facility in an existing vacant ground floor space, including the Fit-out of a server room on the mezzanine level. The Project also includes the Fit-out construction of Nerd Street Gamers' new office headquarters in a space on the 5th level of the 401 Broad Street building.

The Architect:

(Name, legal status, address and other information)

Populous 4800 Main Street, Suite 300 Kansas City, MO 64112 Phone: 816.221.1500

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

User Notes:

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be: (Check one of the following boxes.)

[] The date of this Agreement.

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[X]	A date set forth in a notice to proceed issued by the Owner.
NTP	to be issued by Friday March 12, 2021
[]	Established as follows:
505-0	(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- Not later than one hundred and fifty-five (155) calendar days from the date of commencement of the [X] Work.
- [] By the following date:
- § 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

Localhost - C/O

One Hundred Forty-Nine (149) calendar days from the date of commencement of the Work.

§ 2.3.3 - If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following: (Check the appropriate box.)

- [] Stipulated Sum, in accordance with Section 3.2 below
- [] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with [X] Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

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(Paragraph deleted)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Overhead and Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Overhead and Fee and the method of adjustment to the Overhead and Fee for changes in the Work.)

Three and one-half percent of the Cost of the Work (3.5%) for Fee

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Three Million Three Hundred Thirty-Eight Thousand Eight Hundred Fifty-Six 04/100 Dollars (\$ 3,338,856.04), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. (Insert specific provisions if the Contractor is to participate in any savings.)

§ 3.4.3.1.1 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include a contingency for the Contractor's use following notice to and approval by Owner and in accordance with §3.4.3.1.2 and §3.4.3.1.3 to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. §3.4.3.1.2 The Contractor Contingency shall exist to cover expected but unknown costs that are not detailed in the Guaranteed Maximum Price, or increased costs properly incurred in the performance of the Work which arise after the beginning of the Work and which were and which could not have reasonably been anticipated, but which are not properly considered a Change Order, such as (i) refinement of details of design within the scope and standard of quality and quantities on which the Guaranteed Maximum Price is based, (ii) schedule acceleration, used in the interest of the Contractor to benefit the Project schedule through the use of premium time or overtime for select trades or equipment costs (except to the extent the Contractor or a Subcontractor is at fault), (iii) shift work, design conflicts and changes in the final design plans (iv) availability of material, material or labor cost escalations, (v) corrective Work as a result of damage by parties unknown, or (vi) any other items or costs necessary or appropriate to the timely and proper completion of the Project. Amounts may be charged against Contingency only with the Owner's written consent, which shall not be unreasonably withheld. When Owner has approved a draw against Contingency, the Contractor shall increase the relevant Trade Work budgeted line item(s) by the amount of the decrease the Contingency line item accordingly. To the extent that there are aggregate savings between the line items for each portion of the Work in the GMP and the amount of each Subcontract ("Trade Work Buy-Out"), such aggregate savings shall be added to the Contingency. In no circumstances shall Contingency be transferred or applied to Contractor's

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staffing costs, General Requirements or General Conditions, unless approved in advance by Owner.

§3.4.3.1.3 The Contractor's contingency is not intended for nor shall it be used to pay for costs related to the following: errors or omissions in the Construction Documents; discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or enhancements or additions to the Scope of Work requested by the Owner appropriately addressed under Article 13.

§3.4.3.1.4 At the completion of the buyout process, "buyout savings", if any, shall be added to the Construction Contingency.

§3.4.3.1.5 Unspent Contingency. Any unspent contingency remaining as of the date of final completion shall be shared by the Owner and Contractor. The difference as of the date of final completion between the total aggregate sum of the (i) Cost of the Work plus the Contractor's Fee and (ii) the GMP (such difference being the "Savings") shall be shared_50% to Owner and _50% to Contractor, with the balance due the Owner issued as a deduct Owner Change Order.

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

See attached Exhibit "E" – Contract Alternates

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price: (Identify each allowance.)

ltem	Price
Fiberglass Shower Insert identified in	\$ 4,000
Exhibit "D" as Assumption 11	
Electrical/LV Allowance for NSG Vendor	\$59,000
Scope Integration TBD	,
Loose Overhead Material Inspection	\$1,870
Allowance	

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See attached Exhibit "D" - Assumptions, Exclusions and Clarifications

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

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The Contractor understands that if the Contractor fails to achieve Substantial Completion thirty (30) days after the deadline established under § 2.3.1 and Contractor is not otherwise entitled to a Contract Time extension in accordance with the Contract Documents, the Owner will suffer damages that are difficult and expensive to determine, accurately quantify and document. In the event the Contractor fails to achieve Substantial Completion thirty (30) days after the date set forth in this Agreement, the Contractor shall pay to Owner as liquidated damages a per diem amount of Five Hundred 00/100 Dollars (\$500.00)

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

- § 4.1.1 Based upon Applications for Payment and partial lien releases for Contractor, all subcontractors, sub-subcontractors and material suppliers submitted to the Owner by the Contractor and draw request submitted by the Owner, Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- § 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month,:
- § 4.1.3 Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month subject to Contractor submitting required partial lien releases for prior payment and Owner approval of requested percent complete progress payments, which shall not be unreasonably withheld. If an Application for Payment is received by the Owner after the date fixed above or revisions to initial Application for Payment submission are necessary and provided to Owner in a timely fashion, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment
- § 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner will withhold retainage from the payment otherwise due as follows:

Retainage amounting to ten percent (10%) of the value of each subcontractor's work included in each progress payment until Substantial Completion. At the first Application for Payment submitted after Substantial Completion (as defined in section 15.6.3), retainage shall be reduced to five percent (5%) for all subcontractors and vendors.

No retainage will be held against Contractor's General Conditions, Staffing, Insurance, Taxes, Overhead and Fee.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)

prime rate plus 1

§ 4.2 Final Payment

- § 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when Owner has determined that the Work has been completed and accepted by Owner
 - .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
 - .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
 - .3 a final Certificate of Occupancy has been delivered to the Owner by Contractor.
- § 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the Final Payment conditions above have been completed.

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ARTICLE 5	DISPUTE	RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute

resolution shall be as follows: (Check the appropriate box.)
[X] Arbitration pursuant to Section 21.6 of this Agreement
[] Litigation in a court of competent jurisdiction
[] Other (Specify)
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If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.
ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS § 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.
§ 6.1.1 The Agreement is this executed AIA Document A104 TM _2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.
에 대한 경기 가능하다는 경험에 되었다.
고류를 가입하는 것이 있다. 1985년 - 1985년
경기 현실이 하는 것도 있는 것 같아. 2007년 - 1일 전 1일
§ 6.1.3 The Supplementary and other Conditions of the Contract:
See attached Exhibit "C" and Exhibit "H"
§ 6.1.4 The Specifications: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See attached Exhibit "C"
§ 6.1.5 The Drawings: (Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See attached Exhibit "C"

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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits: (Check all boxes that apply.)

> [X] Exhibit A, Determination of the Cost of the Work.

Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

Nerd Street Gamer's Bid Form Exhibit "B" Exhibit "D" Scope Clarifications and Exclusion Exhibit "E" Contract Alternates Exhibit "F" Contractor's Preliminary, Not for Construction Schedule and Sequence of Work Exhibit "G" Labor Rates Exhibit "H" Landlord Rules and Regulations

ARTICLE 7 **GENERAL PROVISIONS**

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

User Notes:

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be

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construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

- § 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
- § 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be deemed mandatory, non-waivable and an absolute precondition to the relief sought by the party required to provide notice, and provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, by certified or registered mail providing proof of delivery or by electronic transmission

(Paragraph deleted)

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§ 7.9.2 Notice of Claims shall be provided in writing as set forth in §7.9.1, above, and shall be deemed duly served only if delivered to the designated representative of the party to whom the notice is being addressed only if served by

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certified or registered mail or by courier with proof of delivery or by overnight delivery with record of delivery. A party may provide electronic notice, which will be effective upon receipt if such is also delivered by one of the methods above.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

- § 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.
- § 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site upon request of the Contractor.
- § 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. All of the above shall be approved and/or secured as a condition precedent to Owner's issuance of Notice to Proceed.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without further notice and without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

§ 8.4 Landlord

The parties understand and agree that Owner is leasing the premises where construction will be performed under this Contract, that Owner's Landlord is not a party to this Contract and nothing in this Contract shall constitute any contractual obligations on the part of the Landlord.

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ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

(Paragraphs deleted)

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before commencing on-site Work and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the site and that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, The Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the owner and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor's proceeding with the Work or such portions of it as are designated in this Section shall constitute a representation by the Contractor that it has made a reasonable inspection and has satisfied itself that the Work can be performed consistent with the Contract Documents. § 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Notwithstanding the preceding sentence, Contractor shall perform its Work consistent with and in accordance with applicable laws, ordinances, codes, rules and regulations as well as with all applicable industry standards set forth in the Plans and Specifications pertaining to the construction.

§ 9.2 Supervision and Construction Procedures

- § 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall assign a full time, qualified superintendent to oversee the Work, who shall be present at all times when Contractor's forces or those of its subcontractors are present. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.
- § 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

- § 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- § 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall require its forces and those of its subcontractors to comply with all worksite requirements of the Owner and Landlord and shall protect Owner's and Landlord's property from damage during the performance of the Work. Worksite rules specific to the Project are set forth in Exhibit"H".
- § 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Landlord that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for

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those inherent in the quality of the Work the Contract Documents require or permit for a period of one year from the Date of Substantial Completion. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner and Landlord, or shall be transferable to the Owner and Landlord, and shall commence in accordance with Section 15.6.3. Landlord is a third party beneficiary to this Section 9.4 and shall be entitled to bring any claims arising in connection with a breach hereof.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

- § 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- § 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Unused portions of Owner Allowances will be returned to the Owner as a deduct change order less the value of the Contractor's Fee.

§ 9.8 Contractor's Construction Schedules

- § 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In the event of any delays to the project schedule which are not subject to a time extension or otherwise excusable under the terms of the Contract, the Contractor shall promptly provide upon request by the Owner or the Construction Manager a make-up schedule providing for completion at Contractor's cost, of the work within the Contract duration.
- § 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner at time of Notice to Proceed and as adjusted thereafter by contract progress and / or modification.

§ 9.9 Submittals

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§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit in a timely fashion with sufficient time for review without affecting the Project Schedule, through the Owner to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents together with any requests for information, in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. Contractor shall identify all long lead material or equipment and shall include such lead times within its Project Schedule. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the

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Work and of the Contract Documents. The Work shall be in accordance with approved submittals. In the event that Contractor issues a submittal for the Architect's review that proposes changes from the Contract Documents, Contractor shall advise and identify any such deviations as part of the submittal and shall provide any information requested by the Architect to support the request for approval of such submittal.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required by the Contract Documents, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall observe all site use limitations and restrictions as may be required by the Landlord and shall not interfere with Landlord's use of its property.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner, the Landlord and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Landlord, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

- § 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- § 9.15.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out any claims by its subcontractors or suppliers for payment for work, services, labor materials or equipment provided to the Contractor for the performance of the Work under this Contract where Owner has paid Contractor for such work, services, labor, materials or equipment or where such is being sought as extra or changed work on the part of the subcontractor or supplier which has not been subject of a Change Order or Change Directive issued under Article 13, or a Claim, as issued under Chapter 21, of this Contract.

ARTICLE 10 ARCHITECT

§ 10.1 The Owner will provide administration of the Contract as described in the Contract Documents

(Paragraph deleted)

- § 10.3 The Owner and/or Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner and/or Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner and/or Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
- § 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Contractor (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- § 10.5 Based on the Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor and will issue Payment in such amounts.
- § 10.6 The Architect and Owner have the authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.
- § 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

(Paragraph deleted)

§ 10.9 The Owner and Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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ARTICLE 11 SUBCONTRACTORS

- § 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.
- § 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within five days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- § 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.
- § 11.4 Upon request by Owner through the Construction Manager, Contractor shall provide copies of subcontractor certificates of insurance to the Owner and shall require subcontractors to add the Owner, its Designee, the Architect and/or Landlord to the policies as "additional insureds" with primary and non-contributory coverage.
- § 11.5 For any trade requiring a government issued license or registration, Contractor shall only engage licensed or registered subcontractors to perform that Work.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- § 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.
- § 12.1.1 The parties understand and agree that the Owner will engage contractors to perform separate work functions. Contractor shall provide for and allow staging and access to the site for their work as set for the below and shall include their work within the Project Schedule and coordinate the scheduling of such separate contractors.
- § 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.
- § 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

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§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. A signed Change Order shall be deemed final for all changed, added or deleted Work and all schedule impacts associated with the described Work.

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- § 13.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work until it receives a written directive, at which time it shall promptly proceed with the identified Work even if there is disagreement as to the cost or time impact, which shall be addressed through a Claim as set for the herein.
- § 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

ARTICLE 14 TIME

- § 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- § 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- § 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.
- § 14.4 The date of Substantial Completion is the date certified by the Owner in accordance with Section 15.6.3.
- § 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner and Contractor may mutually determine, subject to the provisions of Article 21. The extension of time shall be the exclusive remedy for the contractor and under no circumstances shall owner be subject to increased costs to the Contractor associated with any such delays, unless Owner, its agents or representatives, the Government or Landlord caused the delay
- § 14.6 COVID-19. The Owner and Contractor acknowledge the present and ongoing circumstances regarding the novel coronavirus / COVID-19 pandemic ("COVID-19"). The Contractor represents to the Owner that it has considered and planned for the Work under these present conditions, and agrees to perform it for the Contract Sum and within the Contract Time subject to adjustments as provided in this Agreement for non-COVID-19 changes, if any based on information currently reasonably available concerning COVID-19, including but not limited to relevant health and safety regulations and restrictions. In the event the Contractor contends that changes after the date of this Agreement to the COVID-19-related laws, rules, orders, regulations, or directions by any governmental authority with jurisdiction over the Project will impact the Work, including any potential savings or schedule expediting, the Contractor will immediately notify the Owner in writing with a description of the potential impacts and the Contract

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Time and Contract Sum will be equitably adjusted for such changes to the COVID-19-related laws, rules, orders, regulations, or directions. Additionally, if a Subcontractor, Sub-subcontractor or supplier must cease operations or otherwise cannot progress its work as anticipated due to the impacts of COVID-19, such resulting delay to the progress of the Work shall be considered a Force Majeure Delay.

In order to assure that the Contractor and its subcontractors are adhering to CDC guidelines and the directions by local health officials, the Owner and Contractor hereby agree to act together in good faith to address the requirements of the situation including, but not limited to, any need to review the Project schedule, create a logistics plan, or other special jobsite procedures. Notwithstanding the foregoing, the Contractor shall be solely responsible for implementing these procedures in addition to its already existing health and safety requirements. The Contractor shall report to the Owner weekly during the pendency of the COVID-19 pandemic on the jobsite conditions and the Contractor's ongoing efforts to ensure compliance with these measures. Notwithstanding the foregoing, the Owner will not have any control over the Contractor's means and methods of construction.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

- § 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
- § 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price Cost of the Work under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

(Paragraphs deleted)

- § 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Guaranteed Maximum Price cost breakdown (Exhibit "B") with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.
- § 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 On the first business day of each month, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner require, including all subcontractor work and invoices for work encompassed within the

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application; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Contractor shall provide lien waivers with each application for payment, including for progress and final applications.

- § 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.
- § 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.
- § 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

- § 15.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3. No certificate for payment shall be effective unless and until the Contractor shall provide for itself and for subcontractors performing work or primary suppliers providing materials or equipment encompassed within the payment application a waiver and release of lien for prior work performed or materials and equipment provided and for the work, materials and equipment in the payment application, subject only to Owner's payment of the instant application.
- § 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on the Owner's evaluations of the Work and the data in the Application for Payment, that, to the best of the Owner's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. Following review of a Payment Application, the Owner will identify the amount of the Application which is approved and provide Notice to the Contractor of any disapproved sums no later than twenty (20) days after receipt of the Application by it or its designee. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- § 15.4.3 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 15.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be

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necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner, Landlord or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 the filing of any lien by a subcontractor or supplier to the Contractor or to a subcontractor of the Contractor on work previously paid for by or on behalf of the Owner or for work not subject to an approved change order by the Owner.
- 9 rejection by the landlord or lender of Work in place encompassed within the application.
- § 15.4.4 When the Contractor disputes the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

- § 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.
- § 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.
- § 15.5.3 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- § 15.5.4 Provided the Owner has fulfilled its payment obligations with respect to the work that is subject to a filed lien under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

- § 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Unless agreed to otherwise in writing, substantial completion shall not occur prior to the issuance of a conditional certificate of occupancy, allowing Owner to fully occupy the premises for its intended business.
- § 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- § 15.6.3 Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of

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Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Notice of Substantial Completion shall be submitted to the Owner by the Contractor for written acceptance of responsibilities assigned to them in the Notice. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In the event of liquidated damages associated with delay to reaching the substantial completion date, such shall, if not previously deducted, be deducted from the net retainage sum to be released to the Contractor.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable, including compliance with any lender or Landlord requirements, under the Contract Documents and the Contract fully performed, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor is due and payable. The Owner's acceptance of the Work will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Any such final payment shall be reduced by liquidated damages for final completion as identified in §3.5. Unless otherwise agreed to in writing by the parties and/or required work from Owner's separate contractors is still incomplete, final completion shall not occur prior to issuance of a final, unconditional certificate of occupancy.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete set of as-built documents, warranties, list of subs and a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

- § 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from
 - .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Contract Documents;
 - .3 terms of special warranties required by the Contract Documents;
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
 - .5 as otherwise set forth in Section 9.15

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction;
- .4 Landlord's property

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or

by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

- § 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. Knowing failure on the part of the Contractor or its subcontractors to provide Owner with notice of encountering hazardous materials or substances or knowing failure of the Contractor or its subcontractors to cease work upon encountering hazardous materials or substances shall be at Contractor's sole risk for damages and delays resulting therefrom.
- § 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.
- § 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE

§ 17.1 Contractor's Insurance

- § 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:
- § 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate, and Two Million Dollars (\$2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including
 - .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
 - .2 personal and advertising injury;
 - .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
 - .4 bodily injury or property damage arising out of completed operations; and
 - .5 the Contractor's indemnity obligations under Section 9.15.
- § 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury,

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death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

- § 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.
- § 17.1.5 Workers' Compensation at statutory limits.
- § 17.1.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 17.1.7

(Paragraphs deleted)

- § 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner and Landlord as an additional insured on a primary and non-contributory basis on the Contractor's Commercial General Liability and excess or umbrella liability policy. Upon written request by the Owner, Contractor shall provide a full copy of any or all of the above policies or coverage endorsements including all endorsements.
- § 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor.
- § 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Landlord, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. If this level of coverage cannot be provided Owner shall have the election to (a) terminate this Contract, (b) obtain such additional coverage and charge the Contract balance for the cost of such, or (c) waive such portions of the above coverage as cannot be obtained and proceed with the contract. The same options shall be available to the Owner if the CGL Policy includes exclusions or limitations to coverage that are contrary to exclusion terms that have been approved by the Department of Insurance for the state in which the Project is being constructed, which effectively eliminate insurance coverage for the particular premises, or which are less than any insurance requirements placed upon the Project by the Landlord.
- § 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of

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notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage Limits

Excess Liability ("Umbrella") \$8,000,000 per occurrence and \$8,000,000 in the aggregate for

Bodily Injury and Property Damage

Builder's Risk \$2,900,000

§ 17.1.15 Casualty

In the event of a casualty during construction of the Tenant Improvements, the terms of the Lease shall govern the distribution of any insurance proceeds resulting therefrom.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

- § 17.2.2.1 The Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.
- § 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.
- § 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions.
- § 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Contractor shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Contractor shall be responsible for all co-insurance penalties.
- § 17.2.2.5 Prior to commencement of the Work, the Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Owner's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.
- § 17.2.2.6 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Owner: (1) the Owner, upon receipt of notice from the Contractor, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Contractor waives all rights against the Owner, Subcontractors, and Sub-subcontractors to the extent any loss to the Contractor would have

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been covered by the insurance had it not expired or been cancelled. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

- § 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.
- § 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.
- § 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor it's just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

(Paragraphs deleted)

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and/or Landlord's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work. Any such corrective work, including correction of any other work or property sustaining damage as a result of the defective work, shall be commenced within 7 calendar days of notice of the defective work, unless the defective work is associated with a health or safety hazard in which case work shall commence immediately upon receipt of notice. If the corrective work will entail a period of time in excess of seven (7) calendar days, Contractor shall immediately notify the Owner and shall provide a schedule adjustment showing the work to be completed without change in the Schedule completion date.

- § 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Landlord shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or Landlord fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This one year period shall not diminish or waive Contractor's obligation to correct any latent defects and resulting damage during any applicable statute of limitations or statute of repose. Landlord shall be a third party beneficiary of this Article 18 and entitled to enforce the terms hereof.
- § 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.
- § 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- § 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner or Owner's independent testing agency or local code officials may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Anthony Perno Nerd Street Gamers, Inc. Vice President of Real Estate Cell: 856.780.0564

Email: aperno@nerdstgamers.com

Init.

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§ 19.5 The Contractor's representative: (Name, address, email address and other information)

Jesse Thompson Scungio Borst Associates Senior Project Manager Cell: 856.979-2399 Email: jthompson@scungioborst.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 Non-Solicitation

During the period commencing from the date of this Agreement and ending one year following either the Substantial Completion Date or the Termination of the Contract Date, the Owner shall not, without the Contractor's prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the Contractor or its Affiliates; or (ii) hire, on behalf of the Owner or any other person or entity, any person who has left the employment within the one year period following the termination of that person's employment with the Contractor or its Affiliates.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 days, through no fault of the Contractor, or if the Owner fails to make an approved payment as provided in Section 4.1.3 for a period of an additional 30 days, subject to any additional time set forth above due to lender or landlord review, the Contractor may, upon seven additional days' notice to the Owner terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on such Work, and costs incurred by reason of such termination§ 20.2 Termination by the Owner for Cause (Paragraph deleted)

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors and/or fails to effectuate a discharge of any filed lien as set forth in the Contract;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- § 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon determination that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- § 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
- § 20.2.4 If the unpaid balance of the Contract Sum less liquidated damages, if any, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

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§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee. if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

Contractor is entitled to receive the Fee established in the initial Cost of the Work as shown in the initial Schedule of Values at the start of the Work plus any Fee established in approved Change Orders, in each case, prorated based upon the amount of work completed on such, but unpaid as of the effective date of the Termination for Convenience.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Owner for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Owner or 30 days after submission of the matter to the Owner, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

- § 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
- § 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work or the applicable Statute of Repose, whichever is later.. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

- § 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.
- § 21.5 As an absolute precondition, except as set forth below, the parties shall engage in and endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
- § 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Such arbitration shall be the exclusive remedy for any disputes that cannot be resolved by mediation and shall be final and binding upon the parties. The parties each understand and agree that this arbitration selection shall constitute a full and complete waiver of their rights to file a lawsuit, unless

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any statutory provisions pertaining to lien claims otherwise require or as set forth in Section 21.7. The parties further acknowledge that this provision represents a knowing waiver of the rights to have the matter heard and decided by a judge or jury, except for purposes of enforcement. Any arbitration proceeding shall occur within the Commonwealth of Pennsylvania, City of Philadelphia and any proposed arbitrators shall be comprised of qualified arbitrators proximate to the City of Philadelphia.

- § 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- § 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.
- § 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable applying the law of the Commonwealth of Pennsylvania a court of competent jurisdiction within the Commonwealth of Pennsylvania.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

(Paragraphs deleted)

Init.

Except as otherwise specifically provided in this Agreement, Owner shall not be liable to Contractor for any costs for principal office expenses, except those expenses for the compensation of personnel stationed there that may perform work for the Project and any other home office overhead. Except as otherwise specifically provided in this Agreement, neither party nor any of its employees, officers, or directors are liable to the other party for indirect, special, incidental, punitive, consequential or exemplary damages, including loss of profits or revenue, loss of use, cost of capital, down time costs, loss of production, loss of opportunity, loss of goodwill, and/or claims of customers of the other party for such damages, and each party hereby waives any right to the same; and each party hereby releases the other party and their respective employees, officers and directors from liability to the other for such damages. Contractor shall obtain from all subcontractors and vendors for the benefit of Owner releases from all such liability in accordance with the foregoing provisions of this Section. Owner agrees that the above waiver and release extends to Contractor's subcontractors. The parties agree that the following shall not be construed or deemed to be indirect, special, incidental, consequential or exemplary damages for purposes of this Agreement: (i) damages resulting from personal injuries (including death) and illnesses, property damage, gross negligence, reckless or intentional misconduct, infringement, misappropriation, or breaches of confidentiality, (ii) costs necessary to properly correct the Work and any resulting property damage, (iii) third party damages that either party is obligated to indemnify for pursuant to this agreement and (iv) damages that are liquidated in this Agreement.

This Agreement entered into as of the day and year first written above.

Docusigned by:			DocuSigned by:	
John Fazio			Sim Buckley	
F1DFFB7990BA483			D6411E8377BB4D5	
OWNER (Signature)			CONTRACTOR (Signature)	
John Fazio	CEO	3/17/2021		3/17/2021
30 1 42.70	CE0	3/11/2021	Jim Buckley President	3/17/2021
(Printed name and title)			(Printed name and title)	
,	DocuSign	ed by:	,	
Approved as to form	tiana	Walters		
	1			

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Additions and Deletions Report for

AIA[®] Document A104[™] – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:19:20 ET on 03/12/2021.

PAGE 1

AGREEMENT made as of the 12th day of March in the year 2021

Nerd Street Gamers Localhost Philadelphia, LLC 908 North Third Street Philadelphia, PA 19123 Phone: 267.702.6353

Scungio Borst Associates
2 Riverside Drive, Suite 500
Camden, NJ 08103
Phone: 856.757.0100

Localhost – Philadelphia, PA & NSG HQ 401 North Broad Street Philadelphia, PA 19108

Fit-out construction of a new Localhost esports facility in an existing vacant ground floor space, including the Fit-out of a server room on the mezzanine level. The Project also includes the Fit-out construction of Nerd Street Gamers' new office headquarters in a space on the 5th level of the 401 Broad Street building.

Populous 4800 Main Street, Suite 300 Kansas City, MO 64112 Phone: 816.221.1500 PAGE 3

[X] A date set forth in a notice to proceed issued by the Owner. NTP to be issued by Friday March 12, 2021

[X] Not later than one hundred and fifty-five (155) calendar days from the date of commencement of the Work.

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Localhost -	C/O

One Hundred Forty-Nine (149) calendar days from the date of commencement of the Work,

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

§ 2.3.3 – If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

[X] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

§ 3.2 The Stipulated Sum shall be (\$-), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

PAGE 4

§ 3.2.2 Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item Units and Limitations Price per Unit (\$0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum: (Identify each allowance.)

Item

Price

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4.2 The Contractor's Overhead and Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's <u>Overhead and</u> Fee and the method of adjustment to the <u>Overhead and</u> Fee for changes in the Work.)

Three and one-half percent of the Cost of the Work (3.5%) for Fee

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§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$). Three Million Three Hundred Thirty-Eight Thousand Eight Hundred Fifty-Six 04/100 Dollars (\$ 3,338,856.04), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 3.4.3.1.1 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include a contingency for the Contractor's use following notice to and approval by Owner and in accordance with §3.4.3.1.2 and §3.4.3.1.3 to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. §3.4.3.1.2 The Contractor Contingency shall exist to cover expected but unknown costs that are not detailed in the Guaranteed Maximum Price, or increased costs properly incurred in the performance of the Work which arise after the beginning of the Work and which were and which could not have reasonably been anticipated, but which are not properly considered a Change Order, such as (i) refinement of details of design within the scope and standard of quality and quantities on which the Guaranteed Maximum Price is based, (ii) schedule acceleration, used in the interest of the Contractor to benefit the Project schedule through the use of premium time or overtime for select trades or equipment costs (except to the extent the Contractor or a Subcontractor is at fault), (iii) shift work, design conflicts and changes in the final design plans (iv) availability of material, material or labor cost escalations, (v) corrective Work as a result of damage by parties unknown, or (vi) any other items or costs necessary or appropriate to the timely and proper completion of the Project. Amounts may be charged against Contingency only with the Owner's written consent, which shall not be unreasonably withheld. When Owner has approved a draw against Contingency, the Contractor shall increase the relevant Trade Work budgeted line item(s) by the amount of the decrease the Contingency line item accordingly. To the extent that there are aggregate savings between the line items for each portion of the Work in the GMP and the amount of each Subcontract ("Trade Work Buy-Out"), such aggregate savings shall be added to the Contingency. In no circumstances shall Contingency be transferred or applied to Contractor's staffing costs, General Requirements or General Conditions, unless approved in advance by

§3.4.3.1.3 The Contractor's contingency is not intended for nor shall it be used to pay for costs related to the following: errors or omissions in the Construction Documents; discrepancies with the Construction Documents pertaining to applicable building code requirements; and/or enhancements or additions to the Scope of Work requested by the Owner appropriately addressed under Article 13.

§3.4.3.1.4 At the completion of the buyout process, "buyout savings", if any, shall be added to the Construction Contingency.

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:§3.4.3.1.5 Unspent Contingency. Any unspent contingency remaining as of the date of final completion shall be shared by the Owner and Contractor. The difference as of the date of final completion between the total aggregate sum of the (i) Cost of the Work plus the Contractor's Fee and (ii) the GMP (such difference being the "Savings") shall be shared 50% to Owner and 50% to Contractor, with the balance due the Owner issued as a deduct Owner Change Order.

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

See attached Exhibit "E" - Contract Alternates

PAGE 5

<u>Fiberglass Shower Insert identified in Exhibit "D" as Assumption 11</u>

\$ 4,000

DAMION D ab 1 lobality cross 11

Electrical/LV Allowance for NSG Vendor \$59,000

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Scope Integration TBD

Loose Overhead Material Inspection Allowance \$1,870

•••

See attached Exhibit "D" – Assumptions, Exclusions and Clarifications

The Contractor understands that if the Contractor fails to achieve Substantial Completion thirty (30) days after the deadline established under § 2.3.1 and Contractor is not otherwise entitled to a Contract Time extension in accordance with the Contract Documents, the Owner will suffer damages that are difficult and expensive to determine, accurately quantify and document. In the event the Contractor fails to achieve Substantial Completion thirty (30) days after the date set forth in this Agreement, the Contractor shall pay to Owner as liquidated damages a per diem amount of Five Hundred 00/100 Dollars (\$500.00)

...

- § 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the and partial lien releases for Contractor, all subcontractors, sub-subcontractors and material suppliers submitted to the Owner by the Contractor and draw request submitted by the Owner, Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- § 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
- § 4.1.3 Provided that an Application for Payment is received by the Architect-Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. last day of the same month subject to Contractor submitting required partial lien releases for prior payment and Owner approval of requested percent complete progress payments, which shall not be unreasonably withheld. If an Application for Payment is received by the Architect after the date fixed above, Owner after the date fixed above or revisions to initial Application for Payment submission are necessary and provided to Owner in a timely fashion, payment shall be made by the Owner not later than (—) thirty (30) days after the Architect Owner receives the Application for Payment. Payment

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may will withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)Retainage amounting to ten percent (10%) of the value of each subcontractor's work included in each progress payment until Substantial Completion. At the first Application for Payment submitted after Substantial Completion (as defined in section 15.6.3), retainage shall be reduced to five percent (5%) for all subcontractors and vendors.

No retainage will be held against Contractor's General Conditions, Staffing, Insurance, Taxes, Overhead and Fee.

•••

(Insert rate of interest agreed upon, if any.)

prime rate plus 1

%-.

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							act Sum, shall be ma d and accepted by O	de by the Owner to the wner
					has been issue to the Owner b			with Section 15.7.1.of
	et's fina						er than 30 days after aditions above have l	
	X]	Arbitrat	ion pursua	nt to Section	21.6 of this Ag	greement		
§ 6.1.2 below:	AIA Do	ocument	E203TM 2	013, Buildin	g Information	Modeling an	d Digital Data Exhil	oit, dated as indicated
(Insert	the date	of the l	7203-2013	'incorporate	d into this Agre	e ement.)		
§ 6.1.3	The Su	pplemen	tary and o	ther Conditio	ons of the Conti	ract:		
See atta	iched E	xhibit "(C" and Ext	iibit "H"				
	Docum	nent		Title		Date	P a	ges
See atta	ched F	vhihit "(nin .					
<u>Dec ana</u>	ioned Di	AIIIOIL (-					
	Sectio	n		Title		Date	Pa	ges
								•
See atta	ched E	xhibit "(<u> </u>					
	Numb	er			Title		Date	
§ 6.1.6 ∃	Fhe Ado	lenda, i f	`any:					
PAGE 8	Numb	er			Date		Pages	
		[<u>X</u>]	Exhibit A	., Determinat	ion of the Cost	of the Work	ζ.	
		[_]	AIA Doc	ument E204T	M 2017, Susta	inable Proiec	ets Exhibit, dated as	indicated below:

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(Insert the date of the E204-2017 incorporated into this Agreement.)

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	[-] The Sustainability Plan:								
Title		Date	Pages						
			3 - 3						
	[] Cunnlamor	ntary and other Conditions of the Contract:							
	[-] auppiemer	that y and other conditions of the contract.							
Document		Title	Date	Pages					
, .									
	Exhibit "B"	Nerd Street Gamer's Bid Form							
	Exhibit "D"	Scope Clarifications and Exclusion							
	Exhibit "E"	Contract Alternates							
	Exhibit "F"	Contractor's Preliminary, Not for Construct	ion Schedule ar	nd Sequence of W	ork				
	Exhibit "G"	Labor Rates		•					
	Exhibit "H"	Landlord Rules and Regulations							

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

PAGE 9

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and

§ 7.7 Building Information Models Use and Reliance

exchange of digital data.

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be <u>deemed mandatory</u>, <u>non-waivable and an absolute precondition to the relief sought by the party required to provide notice</u>, and provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by

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courier, or by electronic transmission in accordance with AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: by certified or registered mail providing proof of delivery or by electronic transmission

(If other than in accordance with AIA Document E203 2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.9.2 Notice of Claims shall be provided in writing as set forth in §7.9.1, above, and shall be deemed duly served only if delivered to the designated representative of the party to whom the notice is being addressed only if served by certified or registered mail or by courier with proof of delivery or by overnight delivery with record of delivery. A party may provide electronic notice, which will be effective upon receipt if such is also delivered by one of the methods above.

PAGE 10

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.site upon request of the Contractor.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. All of the above shall be approved and/or secured as a condition precedent to Owner's issuance of Notice to Proceed.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without <u>further notice and without</u> prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

§ 8.4 Landlord

The parties understand and agree that Owner is leasing the premises where construction will be performed under this Contract, that Owner's Landlord is not a party to this Contract and nothing in this Contract shall constitute any contractual obligations on the part of the Landlord.

PAGE 11

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of

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discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

- § 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.
- § 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before commencing on-site Work and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the site and that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, The Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the owner and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor's proceeding with the Work or such portions of it as are designated in this Section shall constitute a representation by the Contractor that it has made a reasonable inspection and has satisfied itself that the Work can be performed consistent with the Contract Documents § 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Notwithstanding the preceding sentence, Contractor shall perform its Work consistent with and in accordance with applicable laws, ordinances, codes, rules and regulations as well as with all applicable industry standards set forth in the Plans and Specifications pertaining to the construction.
- § 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall assign a full time, qualified superintendent to oversee the Work, who shall be present at all times when Contractor's forces or those of its subcontractors are present. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.
- § 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- § 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall require its forces and those of its subcontractors to comply with all worksite requirements of the Owner and Landlord and shall protect Owner's and Landlord's property from damage during the performance of the Work. Worksite rules specific to the Project are set forth in Exhibit"H".

The Contractor warrants to the Owner and Architect-Landlord that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. permit for a period of one year from the Date of Substantial Completion. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused

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by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, Owner and Landlord, or shall be transferable to the Owner, Owner and Landlord, and shall commence in accordance with Section 15.6.3. Landlord is a third party beneficiary to this Section 9.4 and shall be entitled to bring any claims arising in connection with a breach hereof.

PAGE 12

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Unused portions of Owner Allowances will be returned to the Owner as a deduct change order less the value of the Contractor's Fee.

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§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In the event of any delays to the project schedule which are not subject to a time extension or otherwise excusable under the terms of the Contract, the Contractor shall promptly provide upon request by the Owner or the Construction Manager a make-up schedule providing for completion at Contractor's cost, of the work within the Contract duration.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect. at time of Notice to Proceed and as adjusted thereafter by contract progress and / or modification.

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit in a timely fashion with sufficient time for review without affecting the Project Schedule, through the Owner to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents together with any requests for information, in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. Contractor shall identify all long lead material or equipment and shall include such lead times within its Project Schedule. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. In the event that Contractor issues a submittal for the Architect's review that proposes changes from the Contract Documents, Contractor shall advise and identify any such deviations as part of the submittal and shall provide any information requested by the Architect to support the request for approval of such submittal.

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§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, required by the Contract Documents, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data,

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> Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

> The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall observe all site use limitations and restrictions as may be required by the Landlord and shall not interfere with Landlord's use of its property.

> The Contractor shall provide the Owner Owner, the Landlord and Architect with access to the Work in preparation and progress wherever located.

...

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Landlord, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1. PAGE 14

§ 9.15.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out any claims by its subcontractors or suppliers for payment for work, services, labor materials or equipment provided to the Contractor for the performance of the Work under this Contract where Owner has paid Contractor for such work, services, labor, materials or equipment or where such is being sought as extra or changed work on the part of the subcontractor or supplier which has not been subject of a Change Order or Change Directive issued under Article 13, or a Claim, as issued under Chapter 21, of this Contract.

- § 10.1 The Architect Owner will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.
- § 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.
- § 10.3 The Owner and/or Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner and/or Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner and/or Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

- § 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Contractor (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- § 10.5 Based on the Architect's Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Architect Owner will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- § 10.6 The Architect has and Owner have the authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.
- § 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.
- § 10.9 The Owner and Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. PAGE 15
- § 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten-five days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- § 11.4 Upon request by Owner through the Construction Manager, Contractor shall provide copies of subcontractor certificates of insurance to the Owner and shall require subcontractors to add the Owner, its Designee, the Architect and/or Landlord to the policies as "additional insureds" with primary and non-contributory coverage.
- § 11.5 For any trade requiring a government issued license or registration, Contractor shall only engage licensed or registered subcontractors to perform that Work.
- § 12.1.1 The parties understand and agree that the Owner will engage contractors to perform separate work functions. Contractor shall provide for and allow staging and access to the site for their work as set for the below and shall include their work within the Project Schedule and coordinate the scheduling of such separate contractors.
- § 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract

consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, and Contractor or by written Construction Change Directive signed by the Owner and Architect.

Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. A signed Change Order shall be deemed final for all changed, added or deleted Work and all schedule impacts associated with the described Work.

- § 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request partial payment for Work completed pursuant to the Construction Change Directive. The Architect Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. Contractor will prepare a Change Order for Owner Review and Approval. Such approval shall not be unreasonably withheld. Failure to agree upon a price for increased or decreased cost, or a dispute over whether or not the disputed work is changed or within Contractor's scope of work under this Contract shall not excuse the Contractor from performing as directed and the parties reserve the right to file a Claim under the terms of this Contract.
- § 13.3 The Architect Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect-Owner and shall not proceed to implement the change in the Work until it receives a written directive, at which time it shall promptly proceed with the identified Work even if there is disagreement as to the cost or time impact, which shall be addressed through a Claim as set for the herein.
- § 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

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- § 14.4 The date of Substantial Completion is the date certified by the <u>Architect Owner</u> in accordance with Section 15.6.3.
- § 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may Owner and Contractor may mutually determine, subject to the provisions of Article 21. The extension of time shall be the exclusive remedy for the contractor and under no circumstances shall owner be subject to increased costs to the Contractor associated with any such delays, unless Owner, its agents or representatives, the Government or Landlord caused the delay
- § 14.6 COVID-19. The Owner and Contractor acknowledge the present and ongoing circumstances regarding the novel coronavirus / COVID-19 pandemic ("COVID-19"). The Contractor represents to the Owner that it has considered and planned for the Work under these present conditions, and agrees to perform it for the Contract Sum and within the Contract Time subject to adjustments as provided in this Agreement for non-COVID-19 changes, if any based on information currently reasonably available concerning COVID-19, including but not limited to relevant health and safety regulations and restrictions. In the event the Contractor contends that changes after the date of this Agreement to the COVID-19-related laws, rules, orders, regulations, or directions by any governmental authority with

jurisdiction over the Project will impact the Work, including any potential savings or schedule expediting, the Contractor will immediately notify the Owner in writing with a description of the potential impacts and the Contract Time and Contract Sum will be equitably adjusted for such changes to the COVID-19-related laws, rules, orders, regulations, or directions. Additionally, if a Subcontractor, Sub-subcontractor or supplier must cease operations or otherwise cannot progress its work as anticipated due to the impacts of COVID-19, such resulting delay to the progress of the Work shall be considered a Force Majeure Delay.

In order to assure that the Contractor and its subcontractors are adhering to CDC guidelines and the directions by local health officials, the Owner and Contractor hereby agree to act together in good faith to address the requirements of the situation including, but not limited to, any need to review the Project schedule, create a logistics plan, or other special jobsite procedures. Notwithstanding the foregoing, the Contractor shall be solely responsible for implementing these procedures in addition to its already existing health and safety requirements. The Contractor shall report to the Owner weekly during the pendency of the COVID-19 pandemic on the jobsite conditions and the Contractor's ongoing efforts to ensure compliance with these measures. Notwithstanding the foregoing, the Owner will not have any control over the Contractor's means and methods of construction.

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- § 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
- § 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price Cost of the Work under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- 4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.
- § 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.
- § 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate Guaranteed Maximum Price cost breakdown (Exhibit "B") with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner,

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> in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

- § 15.3.1 At least ten days before the date established for each progress payment, On the first business day of each month, the Contractor shall submit to the Architect-Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; require, including all subcontractor work and invoices for work encompassed within the application; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Contractor shall provide lien waivers with each application for payment, including for progress and final applications.
- § 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrells for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. **PAGE 18**
- § 15.4.1 The Architect Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3. No certificate for payment shall be effective unless and until the Contractor shall provide for itself and for subcontractors performing work or primary suppliers providing materials or equipment encompassed within the payment application a waiver and release of lien for prior work performed or materials and equipment provided and for the work, materials and equipment in the payment application, subject only to Owner's payment of the instant application.
- § 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's Owner's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's-Owner's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. Following review of a Payment Application, the Owner will identify the amount of the Application which is approved and provide Notice to the Contractor of any disapproved sums no later than twenty (20) days after receipt of the Application by it or its designee. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- § 15.4.3 The Architect-Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's-Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect-Owner is unable to certify payment in the amount of the Application, the Architect Owner will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect-Owner cannot agree on a revised amount, the Architect-Owner will promptly issue a Certificate for Payment for the amount for which the Architect Owner is able to make such representations to the Owner. The Architect . The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's

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> Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of PAGE 19

.5 damage to the Owner Owner, Landlord or a Separate Contractor;

- repeated failure to carry out the Work in accordance with the Contract Documents.
- the filing of any lien by a subcontractor or supplier to the Contractor or to a subcontractor of the Contractor on work previously paid for by or on behalf of the Owner or for work not subject to an approved change order by the Owner.
- rejection by the landlord or lender of Work in place encompassed within the application.
- § 15.4.4 When either party the Contractor disputes the Architect's-Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.
- § 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- § 15.5.4 Provided the Owner has fulfilled its payment obligations with respect to the work that is subject to a filed lien under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.
- § 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Unless agreed to otherwise in writing, substantial completion shall not occur prior to the issuance of a conditional certificate of occupancy, allowing Owner to fully occupy the premises for its intended business.
- § 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- § 15.6.3 Upon receipt of the Contractor's list, the Architect-Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect Owner determines that the Work or designated portion thereof is substantially complete, the Architect-Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 15.6.4 The Certificate-Notice of Substantial Completion shall be submitted to the Owner and by the Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Notice. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In the event of liquidated damages associated with delay to reaching the substantial completion date, such shall, if not previously deducted, be deducted from the net retainage sum to be released to the Contractor. PAGE 20

- § 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect Owner will promptly make such inspection and, when the Architect finds the Work acceptable Owner finds the Work acceptable, including compliance with any lender or Landlord requirements, under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment is due and payable. The Owner's acceptance of the Work will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Any such final payment shall be reduced by liquidated damages for final completion as identified in §3.5. Unless otherwise agreed to in writing by the parties and/or required work from Owner's separate contractors is still incomplete, final completion shall not occur prior to issuance of a final, unconditional certificate of occupancy.
- § 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete set of as-built documents, warranties, list of subs and a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.
 - .3 terms of special warranties required by the Contract Documents; or
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.payment;
 - as otherwise set forth in Section 9.15
 - other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.construction;
 - Landlord's property

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- § 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. Knowing failure on the part of the Contractor or its subcontractors to provide Owner with notice of encountering hazardous materials or substances or knowing failure of the Contractor or its subcontractors to cease work upon encountering hazardous materials or substances shall be at Contractor's sole risk for damages and delays resulting therefrom.
- § 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

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> (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

INSURANCE AND BONDS ARTICLE 17 ARTICLE 17 INSURANCE

- § 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$\(\sigma\) each occurrence, (\$\(\sigma\)) general aggregate, and (\$\(\sigma\) Two Million Dollars (\$2,000,000.00) each occurrence, Two Million Dollars (\$ 2,000,000.00) general aggregate, and Two Million Dollars (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including
- § 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. PAGE 22
- § 17.1.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.
- § 17.1.7If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.
- § 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.
- § 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$\) per claim and (\$\) in the aggregate.
- § 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner and Landlord as an additional insured on a primary and non-contributory basis on the Contractor's Commercial General Liability and excess or umbrella liability policy. Upon written request by the Owner, Contractor shall provide a full copy of any or all of the above policies or coverage endorsements including all endorsements.
- § 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Landlord, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall

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> apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. If this level of coverage cannot be provided Owner shall have the election to (a) terminate this Contract, (b) obtain such additional coverage and charge the Contract balance for the cost of such, or (c) waive such portions of the above coverage as cannot be obtained and proceed with the contract. The same options shall be available to the Owner if the CGL Policy includes exclusions or limitations to coverage that are contrary to exclusion terms that have been approved by the Department of Insurance for the state in which the Project is being constructed, which effectively eliminate insurance coverage for the particular premises, or which are less than any insurance requirements placed upon the Project by the Landlord. **PAGE 23**

Excess Liability ("Umbrella")

\$8,000,000 per occurrence and \$8,000,000 in the aggregate for

Bodily Injury and Property Damage

Builder's Risk

\$2,900,000

§ 17.1.15 Casualty

In the event of a casualty during construction of the Tenant Improvements, the terms of the Lease shall govern the distribution of any insurance proceeds resulting therefrom.

- § 17.2.2.1 The Owner-Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss
- § 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner-Contractor shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.
- § 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner-Contractor shall be responsible for all loss not covered because of such deductibles or retentions.
- § 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner Contractor shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner-Contractor shall be responsible for all co-insurance penalties.
- § 17.2.2.5 Prior to commencement of the Work, the Owner-Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's Owner's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.
- § 17.2.2.6 Within three (3) business days of the date the Owner-Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner Contractor shall provide notice to the Contractor Owner of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: Owner: (1) the Contractor, Owner, upon receipt of notice from the Owner,

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> Contractor, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner Contractor waives all rights against the Contractor, Owner, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner-Contractor would have been covered by the insurance had it not expired or been cancelled. If the Contractor Owner purchases replacement coverage, the cost of the insurance shall be charged to the Owner-Contractor by an appropriate Change Order. The furnishing of notice by the Owner-Contractor shall not relieve the Owner-Contractor of any contractual obligation to provide required insurance. PAGE 24

- § 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.
- § 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.
- § 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their Contractor it's just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.3 Performance Bond and Payment Bond

- § 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.
- § 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
- § 18.1 The Contractor shall promptly correct Work rejected by the Architect-Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's-Owner's and/or Landlord's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work. Any such corrective work, including correction of any other work or property sustaining damage as a result of the defective work, shall be commenced within 7 calendar days of notice of the defective

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> work, unless the defective work is associated with a health or safety hazard in which case work shall commence immediately upon receipt of notice. If the corrective work will entail a period of time in excess of seven (7) calendar days, Contractor shall immediately notify the Owner and shall provide a schedule adjustment showing the work to be completed without change in the Schedule completion date.

> § 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Landlord shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or Landlord fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This one year period shall not diminish or waive Contractor's obligation to correct any latent defects and resulting damage during any applicable statute of limitations or statute of repose. Landlord shall be a third party beneficiary of this Article 18 and entitled to enforce the terms hereof. PAGE 25

> Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and authority. Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect Owner timely notice of when and where tests and inspections are to be made so that the Architect Owner or Owner's independent testing agency or local code officials may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

Anthony Perno Nerd Street Gamers, Inc. Vice President of Real Estate Cell: 856.780.0564 Email: aperno@nerdstgamers.com PAGE 26

Jesse Thompson Scungio Borst Associates Senior Project Manager Cell: 856.979-2399

Email: jthompson@scungioborst.com

§ 19.7 Non-Solicitation

During the period commencing from the date of this Agreement and ending one year following either the Substantial Completion Date or the Termination of the Contract Date, the Owner shall not, without the Contractor's prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the Contractor or its Affiliates; or (ii) hire, on behalf of the Owner or any other person or entity, any person who has left the employment within the one year period following the termination of that person's employment with the Contractor or its Affiliates.

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If the Architect Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 days days, through no fault of the Contractor, or if the Owner fails to make an approved payment as provided in Section 4.1.3 for a period of 30 days, an additional 30 days, subject to any additional time set forth above due to lender or landlord review, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, and profit on such Work, and costs incurred by reason of such termination, and damages.

termination§ 20.2 Termination by the Owner for Cause

§ 20.2 Termination by the Owner for Cause

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; Subcontractors and/or fails to effectuate a discharge of any filed lien as set forth in the Contract;

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon eertification by the Architect determination that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.4 If the unpaid balance of the Contract Sum <u>less liquidated damages</u>, if any, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this <u>This</u> obligation for payment shall survive termination of the Contract.

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The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, fee. if any, as follows:

Contractor is entitled to receive the Fee established in the initial Cost of the Work as shown in the initial Schedule of Values at the start of the Work plus any Fee established in approved Change Orders, in each case, prorated based upon the amount of work completed on such, but unpaid as of the effective date of the Termination for Convenience.

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect Owner for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect Owner or 30 days after submission of the matter to the Architect, Owner, be subject to mediation as a condition precedent to binding dispute resolution.

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§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Work or the applicable Statute of Repose, whichever is later.. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

- § 21.5 The parties shall As an absolute precondition, except as set forth below, the parties shall engage in and endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
- § 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Such arbitration shall be the exclusive remedy for any disputes that cannot be resolved by mediation and shall be final and binding upon the parties. The parties each understand and agree that this arbitration selection shall constitute a full and complete waiver of their rights to file a lawsuit, unless any statutory provisions pertaining to lien claims otherwise require or as set forth in Section 21.7. The parties further acknowledge that this provision represents a knowing waiver of the rights to have the matter heard and decided by a judge or jury, except for purposes of enforcement. Any arbitration proceeding shall occur within the Commonwealth of Pennsylvania, City of Philadelphia and any proposed arbitrators shall be comprised of qualified arbitrators proximate to the City of Philadelphia.

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§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof applying the law of the Commonwealth of Pennsylvania a court of competent jurisdiction within the Commonwealth of Pennsylvania.

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Except as otherwise specifically provided in this Agreement, Owner shall not be liable to Contractor for any costs for principal office expenses, except those expenses for the compensation of personnel stationed there that may perform work for the Project and any other home office overhead. Except as otherwise specifically provided in this Agreement, neither party nor any of its employees, officers, or directors are liable to the other party for indirect, special, incidental, punitive, consequential or exemplary damages, including loss of profits or revenue, loss of use, cost of capital, down time costs, loss of production, loss of opportunity, loss of goodwill, and/or claims of customers of the other party for such damages, and each party hereby waives any right to the same; and each party hereby releases the other party and their respective employees, officers and directors from liability to the other for such damages. Contractor shall obtain from all subcontractors and vendors for the benefit of Owner releases from all such liability in accordance with the foregoing provisions of this Section. Owner agrees that the above waiver and release extends to Contractor's subcontractors. The parties agree that the following shall not be construed or deemed to be indirect, special, incidental, consequential or exemplary damages for purposes of this Agreement: (i) damages resulting from personal injuries (including death) and illnesses, property damage, gross negligence, reckless or intentional misconduct, infringement, misappropriation, or breaches of confidentiality, (ii) costs necessary to properly correct the Work and any resulting property damage, (iii) third party damages that either party is obligated to indemnify for pursuant to this agreement and (iv) damages that are liquidated in this Agreement.

Docusigned by:

John Fazio

FIDFFB7990BA483...

John Fazio

3/17/2021

Jim Buckley

Jim Buckley

Jim Buckley President

3/17/2021

Docusigned by:

Tiana Walters

D3282D956A5341C...

Tiana Walters

Approved as to form

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Certification of Document's Authenticity

AIA® Document D401™ - 2003

I, Scott P. Scungio, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:19:20 ET on 03/12/2021 under Order No. 9870401199 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104TM – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:			
Scott Scungio			
(Signed) Principal			
(Title)			
3/17/2021	100년 12년 1982년 1987년 12일		
(Dated)		11.000	

Determination of the Cost of the Work

for the following PROJECT:

(Name, location and brief description)

Localhost - Philadelphia, PA & NSG HQ 401 North Broad Street Philadelphia, PA 19108

Fit-out construction of a new Localhost esports facility in an existing vacant ground floor vanilla box space, including the Fit-out of a server room on the mezzanine level. The Project also includes the Fit-out construction of Nerd Street Gamers' new office headquarters in a vanilla box space on the 5th level of the 401 Broad Street building.

THE OWNER:

(Name, legal status, address and other information)

Nerd Street Gamers Localhost Philadelphia, LLC 908 North Third Street Philadelphia, PA 19123 Phone: 267.702.6353

THE CONTRACTOR:

(Name, legal status, address and other information)

Scungio Borst & Associates 2 Riverside Drive, Suite 500 Camden, NJ 08103 Telephone Number: 856.757.0100

THE ARCHITECT:

(Name, legal status, address and other information)

Populous 4800 Main Street, Suite 300 Kansas City, MO 64112 Phone: 816.221.1500

ARTICLE A.1 COSTS TO BE REIMBURSED

§ A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ A.1.2 Labor Costs

§ A.1.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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- § A.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.
- § A.1.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, the type of activity, and, if applicable, any agreed percentage of time to be devoted to the Work.)

Senior Project Managers, Project Managers and Project Accountants are billable on the project for that time spent specifically on the project.

- § A.1.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § A.1.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits, and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.1.2.
- § A.1.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

See Attached Exhibit G - Labor Rates

§ A.1.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

- § A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction
- § A.1.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.
- § A.1.4.2 Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- § A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
- § A.1.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.
- § A.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
- § A.1.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § A.1.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

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§ A.1.6 Miscellaneous Costs

- § A.1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that are specifically incurred and can be directly attributed to this Contract.
- § A.1.6.1.1 Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.
- § A.1.6.1.2 Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior written approval.
- § A.1.6.2 Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the Contractor is liable.
- § A.1.6.3 Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.
- § A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3.
- § A.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.
- § A.1.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor has reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.
- § A.1.6.6 Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior written approval.
- § A.1.6.7 Costs of document reproductions other than standard photocopying and delivery charges when required under the contract.
- § A.1.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § A.1.6.9 Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, or otherwise directly including claims by any person against the Contractor reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.
- § A.1.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior written approval.
- § A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work other than standard commuting expenses.
- § A.1.7 Other Costs and Emergencies
- § A.1.7.1 Other costs incurred in the performance of the Work with the Owner's prior written approval.

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- § A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- § A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ A.1.8 Related Party Transactions

- § A.1.8.1 For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.
- § A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

ARTICLE A.2 COSTS NOT TO BE REIMBURSED

- § A.2.1 The Cost of the Work shall not include the items listed below:
 - .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
 - .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided written approval before such costs are incurred;
 - .3 Expenses of the Contractor's principal office and offices other than the site office;
 - .4 Overhead and general expenses, except as may be expressly included in Article A.1;
 - .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work:
 - .6 Except as provided in Section A.1.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
 - .7 Any cost not specifically and expressly described in Article A.1; and
 - .8 Where a Guaranteed Maximum Price is part of this Agreement, costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS

- § A.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.
- § A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

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ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS

- § A.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.
- § A.4.2 When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § A.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5.

ARTICLE A.5 ACCOUNTING RECORDS

- § A.5.1 The Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law. Such information as may be reasonably requested by the Owner for review and approval of a payment application from the Contractor shall be promptly provided to the Owner as part of the application or upon Owner's specific request.
- § A.5.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors a final accounting of the Cost of the Work.
- § A.5.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 4.2.1 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final payment to the Contractor, or notify the Contractor in writing of the Owner's reasons for withholding payment as provided in Section 15.4.3 of the Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.
- § A.5.4 If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of the written notification of Owner's reasons for withholding payment as provided in Section 15.4.3 of the Agreement. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

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> § A.5.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

(876108089)

Additions and Deletions Report for

AIA® Document A104™ – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:36:20 ET on 03/12/2021.

PAGE 1

Localhost - Philadelphia, PA & NSG HQ

401 North Broad Street

Philadelphia, PA 19108

Fit-out construction of a new Localhost esports facility in an existing vacant ground floor vanilla box space, including the Fit-out of a server room on the mezzanine level. The Project also includes the Fit-out construction of Nerd Street Gamers' new office headquarters in a vanilla box space on the 5th level of the 401 Broad Street building.

Nerd Street Gamers Localhost Philadelphia, LLC 908 North Third Street
Philadelphia, PA 19123
Phone: 267.702.6353

Scungio Borst & Associates
2 Riverside Drive, Suite 500
Camden, NJ 08103
Telephone Number: 856.757.0100

Populous 4800 Main Street, Suite 300 Kansas City, MO 64112 Phone: 816.221.1500 PAGE 2

Senior Project Managers, Project Managers and Project Accountants are billable on the project for that time spent specifically on the project.

See Attached Exhibit G - Labor Rates

PAGE 3

§ A.1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that <u>are specifically incurred and can be directly attributed to this Contract.</u>

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User Notes:

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§ A.1.6.1.2 Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior written approval.

§ A.1.6.6 Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior <u>written</u> approval.

§ A.1.6.7 Costs of document reproductions and delivery charges. other than standard photocopying and delivery charges when required under the contract.

§ A.1.6.9 Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, or otherwise directly including claims by any person against the Contractor reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior <u>written</u> approval, which shall not be unreasonably withheld.

§ A.1.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior written approval.

§ A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Work other than standard commuting expenses.

§ A.1.7.1 Other costs incurred in the performance of the Work with the Owner's prior written approval.

§ A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property-property.

PAGE 4

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

PAGE 5

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law. Such information as may be reasonably requested by the Owner for review and approval of a

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payment application from the Contractor shall be promptly provided to the Owner as part of the application or upon Owner's specific request.

- § A.5.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect-Owner by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 4.2.1 of the Agreement have been met, the Architect-Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy a final payment to the Contractor, or notify the Contractor and Owner-in writing of the Architect's Owner's reasons for withholding a eertificate payment as provided in Section 15.4.3 of the Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.
- § A.5.4 If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Architect. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. the written notification of Owner's reasons for withholding payment as provided in Section 15.4.3 of the Agreement. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

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EXHIBIT B - 4. NERD STREET GAMERS - LOCALHOST & HQ - BID PROPOSAL FORM 401 BROAD STREET, PHILADELPHIA PA BID AT JANUARY 22, 2021 5:00:00 PM

Having carefully examined the Contract Documents for the Nerd Street HQ and Localhost - 401 N. Broad Street together with all addenda thereto, all as prepared by Populous located at 4800 Main Street, Suite 300, Kansas City, MO 64112, and being familiar with the various conditions affecting the Work, the undersigned herein agrees to furnish all materials, perform all labor, and do all else necessary to complete the work in accordance with the Contract Documents for the following GUARANTEED MAXIMUM (GMP) BID of:

GMP BID 3,336,887.00 GMP Bids above include following addenda: LOCALHOST INC. SERVER ROOM NSG HQ IN APRIL PROPOSAL FORM NOTES Trade Description Value 1.1 GENERAL REQUIREMENTS \$45,018.00 \$29,855.01 SURVEY & LAYOUT \$2,500,00 \$2,500:00 **DUMPSTERS & TRASH REMOVAL** \$10,200.00 \$5,400.00 \$5,488,00 \$3,500.00 CLEANUP PLANS, DOCUMENTATION MANAGEMENT \$5,700.00 \$3,850.00 \$9,150.00 \$5,550.00 TEMPORARY MEASURES TEMPORARY POWER & WATER NIC NIC TEMPORARY FACILITIES / TOILETS \$5,520.00 \$4,140.00 SITE SAFETY, MISC. TOOLS / EQUIPMENT \$4,300.00 \$3,475.01 \$2,160.00 \$1,440.00 MISC, OTHER Permit Cost - Pass Through By NSG 1.2 PERMIT COST NIC NIC DEMOLITION \$10,152.00 NIC 2.0 CONCRETE \$23,300.00 NIC 3.1 Leveling and Floor Prep \$156,303.80 \$54,410.25 3.2 Misc. Metals 5.0 METAL \$7,624,40 \$21,500.00 CARPENTRY \$38,907.00 \$9,500.00 Rough & Finish Carpentry \$42,900,00 Supply By NSG 6.2 MILLWORK By Others \$1,470.00 Joint Sealants 7.1 THERMAL & MOISTURE PROTECTION \$1,600.00 \$35,393.00 \$9,114.00 New Egress Door at BOH 8.1 DOORS / FRAMES / HARDWARE GLASS / GLAZING \$13,328.00 \$106,900.00 Glazing Systems, Glass Doors \$214,650.00 \$119,196.00 Framing, Insulation, GWB GWB / FRAMING 9.1 RESILIENT FLOORING \$20,957,45 \$46,126,64 LVT, SDT, Rubber, Carpet, Etc. 9.2 RESINOUS FLOORING \$19,177.00 \$5,020.75 9.3 PAINTING \$34,900,00 \$25,450.00 Toilet Accessories, Signage, Marker board, Etc. MISC ACCESSORIES \$15,737.82 \$5,763.38 10.0 11.0 WINDOW TREATMENTS \$5,497.80 \$6,245.00 \$23,760.00 \$18,900.00 SPRINKLER 15.1 PLUMBING \$8,500.00 15.2 \$100.548.00 15.3 \$519,299.56 \$160,300.00 Climate Master Units in live of Daikin ELECTRICAL \$639,168.75 \$201,390.75 16.1 FIRE ALARM \$48,825.00 \$20,220.00 \$8,575.00 OTHER: TILE N/A List: Tile List: TBD Electrical Allow for NSG Vendor Assist Scope OTHER: ELECTRICAL/LV ALLOWANCE \$59.000.00 N/A OTHER: \$0.00 \$0.00 List: OTHER: \$0.00 \$0.00 List: SUBTOTAL Cost inc. Server Room on Mezz & April HQ Start \$2,033,147.58 \$901,336.78 CONTINGENCY \$31,178,10 \$13.821.90 \$61,655.75 Oversight & Management **GENERAL CONDITIONS** \$126,631.00 General Liabilty & Builders Risk INSURANCE \$29.542.62 \$13,096,86 \$10,780.61 Sales Tax & Phila. BRT TAXES \$4,779.27 Fee & Overhead **OVERHEAD & PROFIT** \$76,848.15 \$34,068.39 **BASE PROPOSAL TOTAL** \$2,308,128.05 \$1,028,758.95

\$3,336,887.00

—□s JF JB

COMBINED PROJECTS TOTAL

CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION:

LOCALHOST PHILADELPHIA, PA

401 N. BOARD STREET PHILADELPHIA, PA 19108

OWNER:

N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR: SCUNGIO BORST & ASSOCIATES (SBA)

	POPULOUS - ARCHITECT	10	T 5 4	D 0
Dwg	Title	Original	Rev 1	Rev 2
	GENERAL			
X-0	COVER SHEET	10/26/20	01/11/21	
X-1	SHEET INDEX	10/26/20	01/11/21	
LS0-0	LIFE SAFETY LEGENDS	10/26/20	01/11/21	
LS0-1	LIFE SAFETY CODE ANALYSIS	10/26/20	01/11/21	
LS0-2	LIFE SAFETY CODE ANALYSIS CONT.	10/26/20	01/11/21	
LS1-2	LIFE SAFETY LEVEL 1 STANDARD CONFIGURATION	10/26/20	01/11/21	
LS1-3	LIFE SAFETY LEVEL 1 – EVENT CONFIGURATION	10/26/20	01/11/21	
LS1-4	LIFE SAFETY MEZZANINE PLAN	10/26/20	01/11/21	
	STRUCTURAL (THORNTON TOMASETTI - STRUCTURAL ENGINEER)			
S0-1	STRUCTURAL GENERAL NOTES	10/26/20	01/11/21	
S1-1	LEVEL 1 FRAMING PLAN	10/26/20	01/11/21	
S1-1.5	MEZZANINE FRAMING PLAN & STRUCTURAL DETAILS	10/26/20	01/11/21	
	ARCHITECTURAL			
D1-1	DEMOLITION PLAN LEVEL 1	10/26/20	01/11/21	
A0-1	ARCHITECTURAL GRAPHIC STANDARDS	10/26/20	01/11/21	
A0-2	TYPICAL TOILET LAYOUTS AND ACCESSORIES	10/26/20	01/11/21	
A1-1	FLOOR PLAN LEVEL 1	10/26/20	01/11/21	
A1-1.5	FLOOR PLAN MEZZANINE	10/26/20	01/11/21	
A4-1	RCP LEVEL 1	10/26/20	01/11/21	
A6-0	INTERIOR ELEVATIONS AND CASEWORK DETAILS	10/26/20	01/11/21	
A8-0	DETAILS	10/26/20	01/11/21	
A8-1	CEILING DETAILS	10/26/20	01/11/21	
A9-0	SCHEDULES	10/26/20	01/11/21	
G1-1	SIGN LOCATION PLAN – LEVEL 1	10/26/20	01/11/21	
G1-2	SIGN LOCATION PLAN – MEZZANINE	10/26/20	01/11/21	
G5-0	GRAPHICS MESSSAGE SCHEDULE	10/26/20	01/11/21	
IA1-1	FNISH PLAN – LEVEL 1	10/26/20	01/11/21	
IA1-1.5	FINISH PLAN – MEZZANINE	10/26/20	01/11/21	
FF1-1A	FURNITURE PLAN – LEVEL 1 A	10/26/20	01/11/21	
FF1-1B	FURNITURE PLAN – LEVEL 1 B	10/26/20	01/11/21	

CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION:

LOCALHOST PHILADELPHIA, PA 401 N. BOARD STREET

PHILADELPHIA, PA 19108

OWNER:

N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR:

SCUNGIO BORST & ASSOCIATES (SBA)

D	FSC, INC - MP&E ENGINEER Title	Original	Rev 1	Rev 2
Dwg	PLUMBING	Original	VeA I	INEV 2
P1-0	PLUMBING WASTE & VENT GAMING ROOM FLOOR PLAN	10/26/20	01/11/21	
P1-1	PLUMBING DOMESTIC WATER GAMING ROOM FLOOR PLAN	10/26/20	01/11/21	
			01/11/21	
P5-0	PLUMBING DETAILS	10/26/20		
P6-0	PLUMBING SCHEDULES	10/26/20	01/11/21	
P6-1	PLUMBING DOMESTIC WATER ISOMETRIC	10/26/20	01/11/21	
P6-2	PLUMBING WASTE AND VENT ISOMETRIC	10/26/20	01/11/21	
	FIRE PROTECTION			
FP1-0	FIRE SPRINKLER GAMING FLOOR PLAN	10/26/20	01/11/21	
FP2-0	FIRE SPRINKLER MEZZANINE FLOOR PLAN	10/26/20	01/11/21	
FP5-0	FIRE SPRINKLER NOTES AND DETAILS	10/26/20	01/11/21	
	HVAC			
MEP0-0	MEP LEGEND AND ABBREVIATIONS	10/26/20	01/11/21	
DM2-0	MEZZANINE MECHANICAL FLOOR PLAN DEMOLITION	10/26/20	Deleted	
M1-0	MECHANICAL GAMING FLOOR PLAN	10/26/20	01/11/21	
M1-1	ENLARGED MECHANICAL FLOOR PLAN	10/26/20	01/11/21	
MP1-0	MECHANICAL PIPING GAMING FLOOR PLAN	10/26/20	01/11/21	
M2-0	MEZZANINE MECHANICAL FLOOR PLAN	10/26/20	Deleted	
MP2-0	MEZZANINE MECHANICAL PIPING FLOOR PLAN	10/26/20	Deleted	
M5-0	MECHANICAL DETAILS	10/26/20	01/11/21	
M6-0	MECHANICAL SCHEDULES	10/26/20	01/11/21	
M7-0	HVAC CONTROLS	10/26/20	01/11/21	
	ELECTRICAL			
E1-1	GAMING POWER FLOOR PLAN	10/26/20	01/11/21	
EL1-1	GAMING LIGHTING FLOOR PLAN	10/26/20	01/11/21	
E1-2	MEZZANINE ELECTRICAL FLOOR PLAN	10/26/20	01/11/21	
EL1-2	MEZZANINE LIGHTING FLOOR PLAN	10/26/20	Deleted	
E5-0	ELECTRICAL DETAILS	10/26/20	01/11/21	
E6-0	ELECTRICAL RISER DIAGRAM	10/26/20	01/11/21	
E6-1	ELECTRICAL GROUNDING RISER DIAGRAM	10/26/20	01/11/21	-
E6-2	ELECTRICAL SCHEDULES	10/26/20	01/11/21	
E6-3	ELECTRICAL SCHEDULES	10/26/20	01/11/21	
E7-0	GAMING SPECIAL SYSTEM FLOOR PLAN	10/26/20	01/11/21	
E7-1	POWER / COMMUNICATION CABLE TRAY	10/26/20	01/11/21	

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CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION:

LOCALHOST PHILADELPHIA, PA

401 N. BOARD STREET PHILADELPHIA, PA 19108

OWNER:

N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR:

SCUNGIO BORST & ASSOCIATES (SBA)

Dwg	Title	Original	Rev 1	Rev 2
	SPECIFICATIONS			
	LOCAL HOST - 401 BROAD STREET PROJECT MANUAL VOLUME 1 OF 2	10/26/20	01/11/21	
	LOCAL HOST - 401 BROAD STREET PROJECT MANUAL VOLUME 2 OF 2	10/26/20	01/11/21	
	ADDENDUM #1 DOCUMENTS			
	SECTION 03 35 46 – CONCRETE TOPICAL TREATMENTS – ADDENDUM 1	10/26/20	N/A	
	REQUEST FOR INFORMATION AND RESPONSES			
	LOCAL HOST RFI FINAL RESPONSE	11/09/20		-
	LOCAL HOST - NSG HQ BID RFI FINAL RESPONSE	11/09/20		
	LOCAL HOST AND HQ BID QUESTIONS - FINAL RESPONSE	11/13/20		

PROJECT DOCUMENTS

Dwg	Title	Original	Rev 1	Rev 2
	CONTRACTOR HEALTH & SAFETY POLICY - NETRALITY DATA CENTER			
	401 NORTH BROAD SCHEDULE 8			
	CONTRACTOR COI REQUIREMENTS FOR 401 N. BROAD STREET 2020			

POPULOUS - ARCHITECT (FOR REFERENCE ONLY)

Dwg	Title	Original	Rev 1	Rev 2
	N3RD ST. 401 BROAD ST./LOCAL HOST EG'S BID SET	10/26/20	01/11/21	
	N3RD ST. 401 BROAD ST./LOCAL HOST SIGNAGE BID SET	10/26/20	01/11/21	

JF JB

Case 22-10609-amc Doc 6-4 Filed 03/11/22 Entered 03/11/22 15:22:39 Desc DocuSign Envelope ID: F4BE5ECF-C9A4-43D7-8634-C3B37 Exhibit D Page 67 of 80

CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION: N3RD STREET HQ

401 N. BOARD STREET PHILADELPHIA, PA 19108

OWNER: N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR: SCUNGIO BORST & ASSOCIATES (SBA)

POPULOUS - ARCHITECT Title Rev 1 Rev 2 Original Dwg **GENERAL** 01/11/21 **COVER SHEET** 10/26/20 X-0 X-1 SHEET INDEX 10/26/20 01/11/21 LS0-0 LIFE SAFETY LEGENDS 10/26/20 01/11/21 LS0-1 LIFE SAFETY CODE ANALYSIS 10/26/20 01/11/21 LS0-2 LIFE SAFETY CODE ANALYSIS CONT. 10/26/20 01/11/21 LS1-1 LIFE SAFETY MEZZANINE LEVEL 10/26/20 01/11/21 LS1-2 10/26/20 01/11/21 LIFE SAFETY LEVEL 5 ARCHITECTURAL 01/11/21 A0-1 ARCHITECTURAL GRAPHIC STANDARDS 10/26/20 A1-1.5 FLOOR PLAN MEZZANINE 10/26/20 Deleted FLOOR PLAN LEVEL 5 10/26/20 01/11/21 A1-5 A4-5 RCP LEVEL 5 10/26/20 01/11/21 INTERIOR ELEVATIONS 10/26/20 01/11/21 A6-0 01/11/21 10/26/20 A8-0 **DETAILS** 10/26/20 01/11/21 A9-0 **SCHEDULES** G1-2 SIGN LOCATION PLAN - MEZZANINE 10/26/20 Deleted G1-5 SIGN LOCATION PLAN - LEVEL 5 10/26/20 01/11/21 G5-0 GRAPHICS MESSSAGE SCHEDULE 10/26/20 01/11/21 IA1-1.5 FNISH PLAN - MEZZANINE 10/26/20 Deleted 01/11/21 IA1-5 FINISH PLAN - LEVEL 5 10/26/20 FF1-5 FURNITURE PLAN - LEVEL 5 10/26/20 Deleted

CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION:

N3RD STREET HQ

401 N. BOARD STREET PHILADELPHIA, PA 19108

OWNER:

N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR:

SCUNGIO BORST & ASSOCIATES (SBA)

	FSC, INC - MP&E ENGINEER			
Dwg	Title	Original	Rev 1	Rev 2
	PLUMBING			
P1-0	N3RD ST. HQ PLUMBING FLOOR PLAN	10/26/20	01/11/21	
P2-0	MEZZANINE PLUMBING FLOOR PLAN	10/26/20	Deleted	
P6-0	PLUMBING SCHEDULES AND DETAILS	10/26/20	01/11/21	
	FIRE PROTECTION			
FP1-0	FIRE SPRINKLER FLOOR PLAN	10/26/20	01/11/21	
FP2-0	FIRE SPRINKLER MEZZANINE FLOOR PLAN	10/26/20	Deleted	
FP5-0	FIRE SPRINKLER GENERAL NOTES AND DETAILS	10/26/20	01/11/21	
	HVAC			
MEP0-0	MEP LEGEND AND ABBREVIATIONS	10/26/20	01/11/21	
DM2-0	MEZZANINE MECHANICAL FLOOR PLAN DEMOLITION	10/26/20	01/11/21	
M1-0	N3RD ST. HQ MECHANICAL HVAC FLOOR PLAN	10/26/20	01/11/21	
MP1-0	N3RD ST. HQ MECHANICAL PIPING FLOOR PLAN	10/26/20	01/11/21	
M2-0	MEZZANINE MECHANICAL FLOOR PLAN	10/26/20	Deleted	
M5-0	MECHANICAL DETAILS	10/26/20	01/11/21	
M6-0	MECHANICAL SCHEDULES	10/26/20	01/11/21	
M7-0	HVAC CONTROLS	10/26/20	01/11/21	
	ELECTRICAL			
E1-1	N3RD ST. HQ POWER FLOOR PLAN	10/26/20	01/11/21	
EL1-1	N3RD ST. HQ LIGHTING FLOOR PLAN	10/26/20	01/11/21	
E1-2	MEZZANINE ELECTRICAL FLOOR PLAN	10/26/20	Deleted	
EL1-2	MEZZANINE LIGHTING FLOOR PLAN	10/26/20	Deleted	
E5-0	ELECTRICAL DETAILS	10/26/20	01/11/21	
E6-0	ELECTRICAL RISER DIAGRAM	10/26/20	01/11/21	
E6-1	ELECTRICAL GROUNDING RISER DIAGRAM	10/26/20	01/11/21	
E6-2	ELECTRICAL SCHEDULES	10/26/20	01/11/21	
E7-1	GAMING SPECIAL SYSTEM FLOOR PLAN	10/26/20	01/11/21	
E7-2	POWER / COMMUNICATION CABLE TRAY	10/26/20	01/11/21	

CONTRACT DOCUMENTS

Exhibit C

PROJECT / LOCATION:

N3RD STREET HQ

401 N. BOARD STREET PHILADELPHIA, PA 19108

OWNER:

N3RD STREET GAMERS, LLC

GENERAL CONTRACTOR:

SCUNGIO BORST & ASSOCIATES (SBA)

OWNER ISSUED PROJECT DOCUMENTS,	POPULOUS - ARCHITECT
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Dwg	Title	Original	Rev 1	Rev 2
	SPECIFICATIONS			
	LOCAL HOST - NSG HEADQUARTERS PROJECT MANUAL VOLUME 1 OF 2	10/26/20	01/11/21	
	LOCAL HOST - NSG HEADQUARTERS PROJECT MANUAL VOLUME 2 OF 2	10/26/20	01/11/21	
	ADDENDUM #1 DOCUMENTS			*****
	SECTION 03 35 46 - CONCRETE TOPICAL TREATMENTS - ADDENDUM 1	10/26/20	N/A	
	REQUEST FOR INFORMATION AND RESPONSES			
	LOCAL HOST RFI FINAL RESPONSE	11/09/20		
	LOCAL HOST - NSG HQ BID RFI FINAL RESPONSE	11/09/20		
	LOCAL HOST AND HQ BID QUESTIONS FINAL RESPONSE	11/13/20		

PROJECT DOCUMENTS

Dwg	Title	Original	Rev 1	Rev 2
	CONTRACTOR HEALTH & SAFETY POLICY - NETRALITY DATA CENTER			
	401 NORTH BROAD SCHEDULE 8		, , , , , , , , , , , , , , , , , , , ,	
	CONTRACTOR COI REQUIREMENTS FOR 401 N. BROAD STREET 2020			

POPULOUS - ARCHITECT (FOR REFERENCE ONLY)

Dwg	Title	Original	Rev 1	Rev 2
	N3RD ST. 401 BROAD ST./ N3RD ST. HQ EG'S BID SET	10/26/20	01/11/21	
	N3RD ST. 401 BROAD ST./ N3RD ST. HQ SIGNAGE BID SET	10/26/20	01/11/21	
	N3RD ST. 401 BROAD ST./ N3RD ST. HQ FUSION TRAINING BID SET	10/26/20	Deleted	

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NSG LOCAL HOST & HQ EXHIBIT D - ASSUMPTIONS, EXCLUSION, AND CLARIFICATIONS

We believe this proposal to be prepared and submitted in accordance with the contract documents. It is our sole intention, to comply with the contract drawings as prepared by Populous, during the construction of this project. Notwithstanding the items listed below;

EXCLUSIONS

The following items are specifically excluded from this quotation unless noted otherwise.

- 1 The identification, testing, handling, remediation or disposal of any hazardous materials.
- 2 PADOT or Local Police Traffic Safety charges or fees.
- 3 Architectural and other Design fees except as set forth within the specifications for Contractor provided shop drawings and submittal requirements
- 4 Testing, Special Inspections and Impact fees except as providded for in the Agreement
- 5 Elevator Operator costs/fees if required
- 6 Geotechnical Inspections.
- 7 Raising or relocation of sprinkler mains and branch lines not identified on plans.
- 8 Structural work, repair or infill
- 9 Engineering stamps or approvals except as set forth within the specifications for Contractor provided shop drawings and submittal requirements
- 10 General Contractor Payment and Performance Bond.
- 11 Sewer and tap fees.
- 12 A/V Systems or Cabling. By Owner Vendors
- 13 Any sitework
- 14 Spray fireproofing
- 15 Furniture & FF&E. By Owner Vendors
- 16 Millwork supply for Localhost and install of the vanity & countertops for Localhost, which is to be by Owner Vendor. We have install of the remainder of the millwork package included in our price
- 17 Utility work or utility relocation work not listed on the drawings.
- 18 Gas
- 19 Storm
- 20 Tele/data Systems or Cabling. By Owner Vendors
- 21 Security Systems, access components, card readers and/or Cabling. By Owner Vendors
- 22 Stage Construction. By Owner Vendors
- 23 Specialty Lighting, Production/Broadcast as these are being handled by Owner.
- 24 Off Hours Work, including any overtime, premium time or weekend work in our proposal.
- 25 Water or Electric Meters
- 26 Specialty Signage
- 27 Reinforcing not shown on plans
- 28 Automatic operating doors including power and connections
- 29 Any work at existing glass/windows/storefronts not indicated for removal and replacement.
- 30 Underground Plumbing
- 31 Signage and Graphics. By Owner Vendors
- 32 Drink Rail, Supply of Reception Desk including back bar portion, Supply of Reception Display, supply millwork at Snack Bar area and supply of the restroom vanity tops with support brackets as these items are considered Millwork and provided by Owner
- 33 Elevated Platforms for stage and commentators stage are supplied and installed by others
- 34 Detail 6,7,8/S1-1.5 curb details and slab turn down in accordance with Localhost RFI question #14.
- 35 AP-3 on Local Host Drawings is excluded as it is not shown, but IS included for the HQ set.
- 36 Fire Pump
- 37 Tile for the Local Host Area is Not applicable
- 38 Structural modifications or systems for stage and production packages.
- 39 Work associated with Local Host RFI question #1 is excluded because the building engineer has not provided any reference drawings.
- 40 All UPS
- 41 Low Voltage cabling for Beck TV
- 42 Appliances
- 43 AWI certification for Millwork
- 44 Pursuant to Local Host RFI questions note#6 and NSG HQ RFI questions note#4 lighting and lighting control systems will be provided by others. These items are excluded for supply.
- 45 Schedule as it relates to potential delays for new Covid-19 government restrictions, site contamination due to Covid -19, leadtime issues due to Covid -19.
- 46 Items to be supplied by Tenant/Vendor/Landlord. All Tenant/Vendor/Landlord items to be supplied will be delivered in the necessary quantities, unloaded and stocked by the supplying vendor within the space at or before the date included in SBA's project schedule

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NSG LOCAL HOST & HQ EXHIBIT D - ASSUMPTIONS, EXCLUSION, AND CLARIFICATIONS

ASSUMPTIONS

We have assumed the following issues to be part of the understanding of the scope of work.

- 1 This Proposal was based on union labor.
- 2 We have included the costs for the landlord to be named as an additional insured for General Liability Insurance including with subcontractors.
- 3 We assume budget transfers can occur between line items.
- 4 We have included 3/8" floor leveling for areas where concrete slabs will be exposed. This material will have a sealer installed on top as the final exposed surface.
- 5 Deposits will be needed for 33% Deposit on Glass material supply
- 6 Millwork supply for the HQ portion of the project will require 1/3 of value for deposit. This millwork is to be supplied and installed by SBA
- 7 Exposed Spiral ductwork to be single wall insulated externally
- 8 We have included all scope adjustments in accordance with RFi answers Dated 11/19/20.
- 9 We have included 2 days of slab X-Ray.
- 10 The coring included in our price is based on the 8" depth of concrete slab as shown on S1-1.
- 11 We have carried \$4,000 for the fiberglass insert shower included in our price as the specification was not included.
- 12 We have not carried the scope for Concrete Topical Treatments spec section 03 35 46 pursuant to the answers from NSG HQ RFI questions #26 and Local Host RFI question #47, due to the post bid inclusion of the 3/8" material leveling of the slabs.
- 13 We assume existing floor coatings can be removed with a single blasttrak/shotblast pass.
- 14 We have assumed the existing surfaces will accept the new material / finishes after a single blastrak/shotblast pass.
- 15 We have assumed that the Localhost will begin construction after the notice to proceed and the NSG HQ portion of the project will begin in April, such that there will be a period with both projects underconstruction simultaneously. (Concurrently)
- 16 All IT & TV cabinets along with power strips are supplied and installed by others.
- 17 All stage and production lighting and associated controls are by others.
- 18 We have assumed that NSG will be supplying all UPS.
- 19 Sprinkler spray protection is provided by others in accordance with note #25 on NSG HQ RFI Question 25 and NSG Local Host RFI question 43.
- 20 We have assumed that the wide cable tray is 4x18 and the narrow cable tray is 4x12 with dividers provided between power cable and IT cable. Dividers for Broadcast and AVI are by others.
- 21 Panel Boards LP-5A thru 5C are included with assumptions pursuant to Local Host RFI Question #10. An addendum will be required for additional clarification.
- 22 A Lighting control panel is included pursuant to Local Host RFI question #11. An addendum is required for clarification which may require additional cost.
- 23 We have assumed that all areas will be received as a vanilla box condition and will not require any special patching or infills of existing surfaces.
- 24 We have assumed all existing fire assemblies are intact.
- 25 Any below slab work will not require off hours or temporary protection.
- 26 We have assumed access to a dedicated freight elevator, where time of access will need to be coordinated with the LL.
- 27 We have assumed that we would have access to dedicated loading and off loading area in the basement loading area
- 28 We have included temporary protection for the work scheduled in the Landlord vestibule area as to control dust, debris and, once the wall is opened up, access to the construction area. This will not be a temporary wall enclosure. If dust is spread to the Landlords vestibule, as a result of our work and poor installation of temporary protection, SBA will clean the vestibule area.
- 29 We have assumed that locations shown for coring are free of utility conflict.
- 30 We have assumed the domestic water tie-in will be within 50LF of the main.
- 31 We assumed that the existing wall framing at the demolished storefront is metal stud framing and no masonry or lentil work is necessary.
- 32 We assume the new door opening to be metal stud framing and GWB for the BOH door included, but indicated as existing in the documents.
- 33 We assume the new hollow metal door to be 3' x 7' and has knock down frame for the BOH door included, but indicated as existing in the documents.
- 34 Climate Master equipment and related components are being provided in lieu of Daikin HVAC equipment and related components. The pricing reflects this value engineering option.
- 35 We will complete all necessary submissions where a contractor is required and pick up the permit, but we have assumed the payment of the building permit costs will be provided by Nerd Street Gamers.
- 36 We have assumed existing spaces will be turned over to SBA in a vanilla box condition, completely empty of all existing items
- 37 We assume all overhead loose material hazards will be addressed and/or removed by landlord prior to SBA receiving space. SBA does not have time or materials associated with repair, remediation or removal of these items, unless the creation of loose materials is specifically associated with SBA's work. SBA has included an allowance of \$1,870 as to perform a detailed inspection of the facility to assure these loose materials were addressed by the landlord and will alert Owner, if additional loose materials are discovered, such that the Owner can address the issue with the landlord, whose responsibility is to remove and address all loose materials
- 38 An allowance of \$59,000 is included for electrical and low voltage work associated with NSG Vendors whose scopes have yet to be integrated into the contract documents, as well as their schedules not presented to SBA. SBA will work with NSG Vendors and NSG to control costs, but changes may be required beyond the allowance, once the scope is presented and reviewed by SBA and the design team. This may also impact the schedule, depending on NSG's Vendors timing, which SBA may require additional GC's for should delay occur beyond what SBA has allocated for oversight indicated in the preliminary schedule.

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NSG LOCAL HOST & HQ EXHIBIT E - CONTRACT ALTERNATES

ALTERNATES

1 Double wall insulated spiral ductwork	\$ 112,210.00
2 Up to an additional 6" of coring at concrete slabs if necessary	\$ 200 / hole
3 To Furnish and Install RF1 in lieu of CA1 at stage platform at Nerd Street HQ	\$ 2,375.88
1 To Furnsih and Install LRT1 in liqu of CA1 at open flex at Nerd Street HO	\$ 8 158 11

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5	Building Permit Issued - 5th Floor HQ	0	0 0		9-Feb-21*		→							
3	Executed Contract / Notice to Proceed	0	0 0		I-Mar-21*		•							
⇒ 6	Construction Kickoff Meeting with all Stakeholders	1	1 09	% 36 08	3-Mar-21 08-Mar-2	21	1				÷	***************************************		
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29	Paint	10	10 0		0-Jun-21 23-Jun-1						1			
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		maining Work	▼ sumr	mary	proj 2010114 - Nerd Street Gamers Whole Sch. BL - Rv6.1					Scungio & Borst						



Exhibit G - Labor Rate Breakdown

Hourly rates for personnel are as follows:	Regular Ra	Overtime Ra	<u>ites</u>	
Principal / President	\$300.00	/hr	\$450.00	/hr
Director of Construction / Preconstruction	\$175.00	/hr	\$262.50	/hr
Senior Project Manager	\$150.00	/hr	\$225.00	/hr
Project Manager - Construction	\$110.00	/hr	\$165.00	/hr
Assistant Project Manager - Construction	\$95.00	/hr	\$142.50	/hr
Project Engineer	\$85.00	/hr	\$127.50	/hr
Superintendent	\$110.00	/hr	\$165.00	/hr
Assistant Superintendent	\$85.00	/hr	\$127.50	/hr
Project Manager - Preconstruction	\$150.00	/hr	\$225.00	/hr
Estimating Support	\$75.00	/hr	\$112.50	/hr
Senior Scheduler	\$110.00	/hr	\$165.00	/hr
Project Accountant	\$65.00	/hr	\$97.50	/hr
Administrative Assistant	\$48.00	/hr	\$72.00	/hr

EXHIBIT H

LANDLORD RULES AND REGULATIONS

- 1. The rights of tenants in the entrances, corridors, elevators of the Building are limited to ingress to and egress from tenants' premises for tenants and their employees, licenses and invitees, and no tenant shall use, or permit the use of, the entrances, corridors, or elevators for any other purpose. No tenant shall invite to such tenant's premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of any of the entrances, corridors, elevators and other facilities of the Building by other tenants. Fire exits and stairways are for emergency use only, and shall not be used for any other purposes by the tenants, their employees, licensees or invitees. No tenant shall encumber or obstruct, or permit the encumbrance or obstruction of, any of the sidewalks, entrances, corridors, elevators, fire exits or stairways of the Building. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of tenants, in such manner as it reasonably deems best for the benefit of tenants generally.
- 2. Tenant's employees shall not loiter around the hallways, stairways, elevators, front, roof or any other part of the Building used in common by the occupants thereof.
- 3. Tenant shall not alter the exterior appearance of the Building by installing signs, advertisements, notices or other graphics on exterior walls, without prior written permission from Landlord, which permission Landlord may withhold in its sole discretion. Similarly, electrical fixtures hung in offices or other spaces along the perimeter of the Building which affect its exterior appearance must be fluorescent and a quality, type, design and bulb color, previously approved in writing by Building management.
- 4. The cost of repairing any damage to the public portions of the Building or the public facilities or to any facilities used in common with other tenants, caused by a tenant or the employees, licensees or invitees of the tenant, shall be paid by such tenant.
- 5. The requirements of tenants will be attended to only upon application at the Building Management Office. Employees of the Building shall not perform any work or do anything outside of their regular assigned duties, unless under special instructions from the Building Management Office.
- 6. Except as specifically provided in the Lease, Tenant shall have no right of access to the roof of or under or adjacent to the Building and shall not install, repair or replace any satellite dish, antennae, fan, air conditioner or other devices on the roof of the Building without the prior written consent of Landlord. Any such device installed without such written consent shall be subject to removal, at Tenant's expense, without notice, at any time.
- 7. Exterior signs on doors and any directory tablet must be approved by Landlord.

- 8. No awnings or other projections over or around the windows shall be installed by any tenant and only such window blinds as are permitted by Landlord shall be used in any tenant's premises.
- 9. No acids, vapors, hazardous substances or wastes, or other materials shall be discharged or permitted to be discharged into the waste lines, vents or flues of the Building. No hazardous substances or wastes shall be discharged or permitted to be discharged into the Building waste disposal system. The water and service closets and other plumbing fixtures in or serving any tenant's premises shall not be used for any purpose other than the purpose for which they were designed or constructed and no sweepings, rubbish, rags, acids or other foreign substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.
- 10. Tenant shall not disturb others. This rule prohibits any noise audible from the hallway, adjoining office suites or outside whether created by musical instruments, radios, television sets, group activities or any other source. Tenant has informed Landlord that Tenant intends to host live group events in the Premises which may create some noise during evening hours. Tenant shall at all times comply with local noise ordinances, and Tenant shall promptly (and to Landlord's satisfaction) address any noise complaints.
- 11. All hand trucks used in the Building shall be equipped with rubber tires and side guards.
- 12. No tenant shall install wires, conduit, sleeves or similar installations in Building shaftways without prior written consent of Landlord, and as Landlord may direct.
- 13. Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Landlord's agents, contractors and employees while making repairs or alterations therein.
- 14. Tenants shall not permit any cooking or food odors emanating from their demised premises to be detectable in any other portions of the Building.
- 15. Tenants shall coordinate entrance door locks with the Building's master lock system. Upon vacating the Building, tenants must return keys to storerooms, offices and toilets or pay replacement costs.
- 16. All entrance doors in each tenant's premises shall be left locked when the tenant's premises are not in use. Entrance doors shall not be left open at any time.
- 17. Tenants shall not keep pets, bicycles, or other vehicles in their premises without prior written approval by Landlord. Exceptions are made for seeing-eye dogs and conveyances required by handicapped persons.
- 18. Regular suppliers of outside services must be approved by Building management, which may establish hours or other conditions for entrance to the Building. Such suppliers include vendors of food, spring water, ice, towels, barbering, shoe shining and other products and services.

- 19. Canvassing, soliciting and peddling of products or services are prohibited in the Building, and tenants shall cooperate with Landlord in attempting to prevent such acts in the Building.
- 20. Landlord may refuse admission to the Building outside of normal hours to any person not having a pass issued by Landlord or not properly identified, and may require all persons admitted to or leaving the Building outside of normal business hours to register. Tenant's employees, agents and visitors shall be permitted to enter and leave the Building whenever appropriate arrangements have been previously made between Landlord and Tenant. Each tenant shall be responsible for all persons for whom such person requests such permission and shall be liable to Landlord for all acts of such persons. Any person whose presence in the Building at any time shall, in the reasonable judgment of Landlord, be prejudicial to the safety, character, reputation and interests of the Building or its tenants may be denied access to the Building or may be rejected therefrom. In case of invasion, riot, public excitement or other commotion, Landlord may prevent all access to the Building during the continuance of the same, by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building. Landlord may require any person leaving the Building with any package or other object to exhibit a pass from the tenant from whose premises the package or object is being removed, but the establishment and enforcement of such requirements shall not impose any responsibility on Landlord for the protection of any tenant against the removal of property from the premises of the tenant. Landlord shall in no way be liable to any tenant for injury or loss arising from the admission, exclusion or ejection of any person to or from the tenant's premises or the Building under the provisions of this rule.
- 21. Tenant, at its sole cost and expense, shall cause the Premises to be exterminated from time to time to the reasonable satisfaction of the Building Management Office, and shall employ such exterminators therefor as shall be approved by the Building Management Office.
- 22. Tenants shall not serve or permit the serving of alcoholic beverages in the its premises unless Tenant shall have procured host liquor liability insurance, issued by companies and in amounts reasonably satisfactory to Landlord, naming Landlord and its managing agent as additional insureds.
- 23. The Building loading docks may be used only for loading and unloading procedures. Tenants may not use the loading dock area for parking. Tenants may not place any dumpsters at the loading docks or any other portion of the Building without the prior written approval of Landlord.
- 24. No shutdowns of any Building Systems will be permitted without prior written approval of Landlord and supervision by the Building engineer. Each such shutdown shall be performed only by Landlord, at Tenant's expense.
- 25. Tenant's contractors or vendors may not use any space within the Building outside the Premises for storage or moving of materials or equipment or for the location of a field office or facilities for the employees of such contractors or vendors without obtaining Landlord's prior written approval for each such use. Landlord shall have the right to terminate such use and

remove all such contractor's or vendor's materials, equipment and other property from such space, without Landlord being liable to tenant or to such contractor or vendor, and the cost of such termination and removal shall be paid by Tenant to Landlord.

- 26. Tenants are required to have a full service maintenance contract covering their HVAC, Uninterrupted Power Supply (UPS), Tenant's Generator, fire suppression and alarm systems and Automatic Transfer systems, and to provide copies of such contracts to the Building management office.
- 27. The Building reserves the right to restrict the use of certain materials (for example, Omega sprinkler heads and piping manufactured in The Republic of China) in the Building based on notifications that declare the materials unsafe.
- 28. Elevators for freight handling service will be operated during Business Hours on Business Days, unless special arrangement is made with Landlord for operation at other times. In the interest of preserving the continuity of freight elevator service, freight will not be floored upon the freight elevator, but will at all times be handled and moved upon suitable vehicles of the indoor industrial wheeler type permitting such freight to be economically and expeditiously wheeled on and off the freight elevators. Freight which cannot be handled upon such equipment will be handled in such alternative manner as may be approved by Landlord.
- 29. (a) The loading docks located on first or ground floor of the Building are designed to accomplish the immediate transfer and movement of freight between the freight elevators and trucks. The use of such facility by Tenant or any of its agents, servants, employees, representatives or contractors will be confined to such purpose, under the reasonable direction and control of the duly authorized representative of Landlord in charge of such operation.
- (b) No storage or holding of freight on such loading docks awaiting the arrival of trucks, or awaiting transfer by Tenant from such loading docks to the Premises, will be permitted. No automobiles of Tenant or any Tenant Party may enter on or be stored in any portion of the Building.
- (c) Any violation of this rule or disregard of directions issued by Landlord will give Landlord the right to handle, transfer, remove or store such freight in or to other premises in the Building. When such handling, transfer, removal or storage is performed by Landlord, and when it shall be deemed necessary by Landlord to preserve the continuity of common service provided by this facility, any and all expense will be at Tenant's sole cost and expense. Landlord will not be responsible for any loss or damage which any such freight may suffer by such handling, removing or storage.
- 30. Neither Tenant nor any Tenant Party will at any time be permitted to operate any freight, passenger or truck elevator.
- 31. Tenant shall not, under any circumstances, permit the accumulation of sweepings or any other rubbish in the expansion joints of the Building, or in any other portions of the Building outside of the Premises, and all such sweepings or rubbish shall be removed daily by Tenant in such manner as Landlord shall direct. Tenant will keep the Building's expansion joints free of any and all rubbish, sweepings and any other obstruction of any nature whatsoever. Tenant

will not place machinery or equipment in a position so that such machinery or equipment straddles an expansion joint, or erect a partition which intersects an expansion joint, unless one end of such machinery, equipment or partition is free to permit the expansion and contraction of such expansion joint.

- 32. If any of Tenant's equipment or installations made or operated by Tenant shall emit any electromagnetic interference, Tenant shall immediately discontinue use of such installations until such electromagnetic interference is eliminated to Landlord's satisfaction.
- 33. Landlord reserves the right at any time and from time to time, to rescind, alter, waive, modify, add to or delete, in whole or in part, any of these Rules and Regulations in order to protect the comfort, convenience and safety of all tenants at the Building. Tenant shall not have any rights or claims against Landlord by reason of non-enforcement of these rules and regulations against any tenant, and such non-enforcement will not constitute a waiver as to Tenant.
- 34. There shall be no smoking or consumption of tobacco products anywhere within the Building, on the property on which the Building is located, or within fifteen (15) of any entrance to the Building.
- 35. If there shall be any inconsistencies between the text of the main body of the Lease and these Rules and Regulations, the provisions of the Lease shall prevail.